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February 28, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554-0001

Dear Mr. Caton:

We transmit herewith, on behalf of ITFS Parties, an original and 11 copies of Joint Comments in response to the *Notice of Proposed Rulemaking* in MM Docket No. 95-176, relating to closed captioning of video programming. Also enclosed, for the convenience of the Commission, is a computer diskette containing a copy of the Joint Comments in WordPerfect 6.1 format.

Should any questions arise concerning this matter, kindly contact the undersigned counsel.

Sincerely,

Todd D. Gray

Todd D. Gray

TDG:LKR

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C.

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FEB 28 1997

In the Matter of)
)
Closed Captioning and Video Description)
of Video Programming)
)
Implementation of Section 305 of the)
Telecommunications Act of 1996)
)
Video Programming Accessibility)

MM Docket No. 95-176

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: The Commission

JOINT COMMENTS OF ITS PARTIES

Arizona State Board of Regents for Benefit of the University of Arizona, Board of Regents of the University of Wisconsin System, California State University, Greater Dayton Public Television, Inc., KCTS Television, Northeastern Educational Television of Ohio, Inc., Oregon State System of Higher Education, Pasadena Unified School District, Regents of the University of Minnesota, St. Louis Regional Educational and Public Television Commission, San Diego County Superintendent of Schools, Santa Ana Unified School District, South Carolina Educational Television Commission, State of Wisconsin--Educational Communications Board, The Ohio State University, University of Maine System, University of Southern California, University of Wyoming, University System of the Ana G. Mendez Educational Foundation, WITF, Inc. and West Central Illinois Educational Telecommunications Corporation

(collectively, the "ITFS Parties"), by their attorney, submit these Joint Comments in response to the *Notice of Proposed Rulemaking* in MM Docket No. 95-176, relating to closed captioning of video programming.

The ITFS Parties

The ITFS Parties are public or private educational institutions or systems, school districts, state educational telecommunications agencies, educational institution consortia, and/or public broadcasters. Each of the ITFS Parties operates ITFS facilities, in some cases on a state-wide or regional basis. Many of the ITFS Parties have entered or are considering entering excess capacity agreements with wireless cable operators. Several of the ITFS Parties are among the nation's oldest and largest ITFS system operators, and they have consistently participated in FCC inquiries and rulemaking proceedings affecting ITFS.

Captioning Proposal

The impetus for the FCC's proposal is Section 713 of the Communications Act, which was adopted by the Telecommunications Act of 1996. Section 713 requires the FCC to prescribe, by August 8, 1997, rules and implementation schedules for captioning of video programming to ensure access by persons with hearing disabilities. This includes programming published or exhibited *after* the effective date of the new rules, which programming is to be "fully accessible" through the provision of closed captions, and programming first published or exhibited *prior to* the new rules, the availability of which is to be "maximized." The FCC may exempt certain programs or classes of programs, or certain providers or owners of video

programming, based on a showing that the provision of captioning would be economically or unduly burdensome.

ITFS Programming Should Be Exempt

The ITFS Parties are mindful of the need to make video programming available to persons with hearing impairments and they sympathize with the goals underlying Section 713. However, they urge that, to the extent that their video programming might otherwise be included in the FCC's captioning requirements, the FCC take specific action in this proceeding to create an exemption for ITFS programming as a class of programming, and ITFS licensees as a class of provider. The ITFS Parties believe that, if captioning requirements were imposed on their operations, the result would be a direct and devastating reduction in the quantity of such programming available to receive sites and to the public. Furthermore, the ITFS Parties believe that a captioning mandate under Section 713 is unnecessary, as ITFS licensees and their school receive-sites are already required by other federal rules to accommodate hearing impaired persons on a case-by-case basis.

Section 713 has been interpreted in the *NPRM* as applying only to video programming delivered electronically to consumers. ITFS programming is delivered on a point-to-multipoint basis, with educational receive sites and other learning centers individually licensed to receive such programming. Often, such programming is only directed at students enrolled in specific telecourses. Thus, it would appear that such transmissions are not delivered generally to "consumers," and thus would not be included in the FCC's captioning requirements. The ITFS Parties urge the FCC to confirm this interpretation of the *NPRM*.

When ITFS licensees lease excess capacity to a wireless cable operator, as permitted by Section 74.931(e) of the FCC's Rules, they often arrange to have their programming included in the wireless cable operator's offerings to its subscribers. While the programming arguably does reach "consumers," such service is merely adjunct and supplementary to the ITFS licensee's primary service to schools and other receive sites, and is provided in the interest of making such educational programming--already on the system--available to others who may choose to view it. However, the primary mission of each ITFS licensee is to serve its receive sites with programming prescribed by Section 94.931(a), (b) and (c) of the Rules, and the ITFS licensee typically derives no additional economic advantage from the inclusion of its programming in the wireless cable operator's service offerings. Thus, the ITFS Parties urge that ITFS programming be exempt from captioning requirements, even when it is available to subscribers on wireless cable systems.^{1/} The effect of a captioning requirement for ITFS programming made available to wireless cable subscribers would likely not result in such programming being captioned, as captioning would not be required for the programming if it were only to be delivered to ITFS receive sites. Rather, it would mean that the ITFS licensee and the wireless cable operator would withdraw the availability of the programming to wireless cable subscribers.

^{1/} In this respect, the ITFS Parties only seek exemption for the transmission of ITFS programming defined in Section 931(a), (b) and (c) of the Rules, not for broadcast or cable programming transmitted to subscribers over their ITFS channels by excess capacity lessees. ITFS programming is clearly delineated in that Rule, and it can thus be narrowly defined as a class of exempt programming. The Commission should note, however, that ITFS programming as so defined is somewhat wider in scope than just "instructional," as it includes such things as cultural and general educational programming, teacher and in-service training, and administrative programming (such as teleconferences) for the licensee. Thus, the exemption for "instructional" programming on public television, cable, wireless cable and other delivery systems, suggested in paragraph 76 of the *NPRM*, should be viewed as a separate matter.

Bases for Exemption

ITFS programming as a class of programming, and ITFS licensees as a class of provider, should be exempt for two basic reasons. ITFS operators lack resources to caption their programming and thus a captioning requirement will result in the loss of much of the programming being offered. Also, essential in-school ITFS service is subject to other federal requirements that already result in accommodation of hearing disabilities on a more focused, case-by-case basis.

To illustrate the costs of captioning and effect of a requirement on ITFS licensees, several of the ITFS Parties have analyzed captioning issues and have reported the following information.

The University of Wisconsin System currently provides three types of video courses to its students. For live classroom programming, where a professor teaches in front of a camera, the cost to produce a program without captions would be about \$200 per hour. If the telecourse requires some post-production work and graphics, as well as on-location production, the cost would be about \$200 - \$400 per hour to produce. Even where considerable post-production work is necessary, as would be the case with enhanced graphics and animation, the cost to produce telecourses would not typically exceed \$600 per hour. When these production costs are compared to captioning costs set forth in the *NPRM* at paragraphs 18-22, which run as high as \$1200 per hour, the Commission can readily see that the cost of captioning telecourses could far exceed the cost to produce the program in the first place, economically engulfing the University's efforts to engage in telecommunicated learning. Indeed, the University estimates that a captioning requirement for its telecourses would cost approximately \$225,000 per

semester.

The University of Southern California currently provides a schedule of live academic classes and professional development courses (both live and taped) on eight digitally compressed ITFS channels in Greater Los Angeles. It estimates that, to close caption all its programming, additional personnel costs would be approximately \$1,100,000 per year, facilities modifications would cost approximately \$100,000, and closed caption generating equipment would cost approximately \$150,000. It concludes that, because a majority of its schedule will continue to be viewed by students in specific live courses, closed captioning of these courses would be a prohibitive expense, and would result in a diminution of existing service.

The University of Minnesota has for over 25 years provided graduate level engineering programming to students at sites in Minnesota and Western Wisconsin. It currently runs about 25-30 hours per week on four separate channels. It also plans to add one or two additional channels within the next several years with similar schedules. It believes that, due to the highly technical nature of most of its programming, specialized captioners familiar with terminology from several engineering disciplines would be required, at prohibitive expense. It also points out that it has an average of 725 enrolled students per year, and over 25 years has never had a request for captioning or special arrangements for hearing impaired students. It thus believes that, for its service, the number of prospective beneficiaries of captioning is so low as to not justify the expense of an across-the-board captioning requirement.^{2/}

^{2/} The University points out that alternative approaches are available, in individual cases. For example, a school could use a video mixer and extra camera, to key a signer into the corner of the picture. In some cases of limited impairment, a special audio headset can be used to amplify the audio program. To supplement a lecture, instructors can fax or e-mail materials to students or provide information on their website. Students are also always welcome to attend class

Santa Ana Unified School District reports that, especially for locally-produced programs, board of education telecasts, and videos from educational content producers that are not captioned, captioning would be economically burdensome. It also points out that, given the community served by its transmissions, closed captioning, if provided, should be in both English and Spanish, and perhaps Cambodian and Vietnamese. In this respect, Santa Ana highlights a serious problem for the Commission's proposal in general when an ITFS licensee serves communities with substantial populations of non-English speaking students--in what language must the captioning be provided? Santa Ana concludes that, while it does and will as a matter of sound educational philosophy seek to acquire pre-produced video programming that contains captions, where available and meeting its needs, a general captioning requirement would be beyond its capabilities and would result in the loss of programming now available.

The Commission should be mindful that, in the educational context that forms the core of ITFS service, several other federal laws already require accommodation of disabilities, including hearing impairments, on a much more individualized, targeted basis. Thus, exempting ITFS programming generally will not necessarily result in the deprivation of service to the disabled.

Under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, recipients of federal funding must make a reasonable percentage of all programming accessible to disabled persons. That law permits accessibility for hearing impaired persons to be accomplished through open or closed captioning, subtitling, or signing, and permits administrative and financial costs of such accommodations to be considered in judging how best to meet a particular student's needs.

on campus, where a signer will be provided when required.

Under Title II, Sections 201 through 205 of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12134,^{3/} public entities are required to make programming they provide accessible to the disabled unless so doing would fundamentally alter the nature of the program or would create an undue financial or administrative burden. Again, there is no specific requirement that accessibility for the hearing impaired be accomplished through closed captioning, and these matters are evaluated in the context of the needs of specific persons with disabilities.

Finally, the Individuals with Disabilities Education Act, 20 U.S.C. §§1400 et seq., requires school districts to provide special education and related services for students with disabilities, by way of requiring a “free appropriate public education” that is individually tailored to the student’s needs. These special education and related services can and often do address the needs of students with hearing impairments.

Conclusion

For the foregoing reasons, the ITFS Parties urge the FCC to exempt ITFS programming as a class of programming, and ITFS licensees as a class of provider, from the captioning requirements to be adopted in this proceeding.

^{3/} See also, Department of Justice Regulations implementing the ADA, 28 C.F.R. §35.160 and 28 C.F.R. Part 35, Appendix A.

Respectfully submitted,

ARIZONA BOARD OF REGENTS FOR
BENEFIT OF THE UNIVERSITY OF
ARIZONA

BOARD OF REGENTS OF THE UNIVERSITY
OF WISCONSIN SYSTEM

CALIFORNIA STATE UNIVERSITY

GREATER DAYTON PUBLIC TELEVISION,
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EDUCATION

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